

COPY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

XO-SHEN ZHOU, a/k/a JASON ZHOU,

Plaintiff,

vs.

Civil #: 6:08-CV-444

SUNY INSTITUTE OF TECHNOLOGY; DRS. LISA
BERNARDINO; STEPHEN HAVLOVIC; WILLIAM
LANGDON; PETER SPINA, PERSONALLY AND
IN THEIR OFFICIAL CAPACITY,

Defendants.

Transcript of the Examination Before Trial
of LISA BERARDINO, a Witness called for the
purpose of discovery, taken on June 9, 2010, at
SUNY IT, Utica, New York, taken before Angela S.
Stangel, Court Reporter and Notary Public,
pursuant to Notice.

ANGELA S. STANGEL
Court Reporter
10455 Webster Hill Road
Boonville, New York 13309
(315) 827-4010

A P P E A R A N C E S

For Plaintiff:

BY: SATTER & ANDREWS, LLP
ROSS P. ANDREWS, ESQ.
217 South Salina Street
Sixth Floor
Syracuse, New York 13202

For Defendants:

BY: STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
DOUGLAS J. GOGLIA, ESQ.
The Capitol
Albany, New York 12224-0341

ALSO PRESENT: ANTHONY F. PANEBIANCO, Associate Vice
President, SUNY IT

S T I P U L A T I O N S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IT IS HEREBY STIPULATED AND AGREED
that the transcript may be signed before any
Notary Public with the same force and effect as
if signed before a clerk or Judge of the Court;
and it is

FURTHER STIPULATED AND AGREED that
this deposition may be utilized for all purposes
as provided by the Federal Rules of Civil
Procedure; and it is

FURTHER STIPULATED AND AGREED that
all rights provided to all parties by the Federal
Rules of Civil Procedure shall not be deemed
waived and the appropriate sections of the
Federal Rules of Civil Procedure shall be
controlling with respect thereto.

1	I N D E X O F W I T N E S S	
2		
3	WITNESS	PAGE
4	LISA BERARDINO	
5	By Mr. Andrews	5
6		
7	EXHIBIT	PAGE
8	49 - HANDWRITTEN NOTES, BATES 572-573	42
	50 - HANDWRITTEN NOTES, BATES 559-561	42
9	51 - RECOMMENDED TIME TABLE, BATES 555	42
	52 - MEMO 11/15/06	42
10	53 - MEMO 10/31/06, BATES 227	91
	54 - HANDWRITTEN NOTES	99
11	55 - E-MAIL	99
	56 - COMMENTS, BATES 351	105
12	57 - LETTER ON JARREL, BATES 503	119
	58 - BATES 504-505	119
13	59 - MEMO 3/31/08, BATES 217	126
	60 - SLN FORM, BATES 322	130
14	61 - MEMO 11/14/06, BATES 00159	156
15	REQUEST	PAGE
16	By Mr. Ross:	
17	1 - FALL '05 ACCTG 685-35 ON-LINE RATINGS	109
18	2 - E-MAIL FROM DEAN TO BERARDINO	163
19	3 - CONTENTS OF DEAN'S FOLDER & PAGE NUMBERS	189
20		
21		
22		
23		
24		
25		

LISA BERARDINO BY MR. ANDREWS

1 faculty in putting together a binder, it was to
2 refer them to resource materials; is that a fair
3 statement?

4 A. That is fair.

5 Q. So you didn't have any further
6 participation in putting together another faculty
7 member's binder?

8 A. That is correct.

9 Q. So you were referring to the criteria?

10 A. Yes.

11 Q. Which guides the faculty member in
12 putting together their own binder?

13 A. Uh-huh. Yes.

14 Q. So what does the faculty member do once
15 they have assembled the binder?

16 A. Okay, according to the timeline they
17 deliver it to the School of Business where the
18 binder is available for all of the tenured
19 faculty to review the binder. At this time we
20 had a three person Peer Review Committee that
21 reviewed the binder material in addition to other
22 available material. And the Peer Review of
23 three, we make a recommendation and then we go in
24 to the all tenured and make the decision in the
25 all tenured faculty meeting. From there the

LISA BERARDINO BY MR. ANDREWS

1 when Robert and I come in the members have seen
2 that memo and then we present it and take any
3 questions.

4 Q. I think you said you also presented a
5 summary, no?

6 A. What I meant was that we are presenting
7 the decision of the School of Business. I meant
8 to say that we are presenting the decision of the
9 School of Business.

10 Q. And then questions were asked of you and
11 Doctor Yeh; is that correct?

12 A. At the first meeting there were not
13 questions.

14 Q. The first meeting of the College Wide
15 Personnel Committee?

16 A. That is correct.

17 Q. That was just for presentation?

18 A. Let's see, the Committee said that they
19 would not consider our candidates in the form,
20 that the memos were too brief.

21 Q. So did you go back and prepare a more
22 detailed memo?

23 A. So we were given a week to go prepare a
24 more detailed memo.

25 Q. At that first College Wide Personnel

LISA BERARDINO BY MR. ANDREWS

1 Committee meeting that you have been discussing
2 did you also present regarding Doctor Gaffney?

3 A. Let's see, all three memos were told to
4 be revised.

5 Q. You obviously anticipated my ultimate
6 question. Before that time had you presented
7 memos to the College Wide Personnel Committee?

8 A. No.

9 Q. So that was your first occasion to do
10 so?

11 A. Yes.

12 Q. So did you, in fact, prepare a more
13 detailed memo?

14 A. Okay --

15 Q. I am sorry?

16 A. I am just pausing. I followed up on the
17 instructions of College Wide by E-mailing
18 requests for more information to the Dean and the
19 two coordinators, the coordinator of
20 undergraduate programs, Bob Orillio, and
21 coordinator of finance and accounting, Will
22 Langdon.

23 Q. Is that what the College Wide Personnel
24 Committee had directed you to do?

25 A. That was my understanding.

LISA BERARDINO BY MR. ANDREWS

1 Q. Did the College Wide Personnel Committee
2 say to contact those people for additional
3 information?

4 A. I am going to say no.

5 Q. Now, there was a considerable amount of
6 information in the binder assembled by
7 Doctor Zhou; is that correct?

8 A. Yes.

9 Q. Was that information used in whole or in
10 part in preparing the more detailed memo?

11 A. I am going to say yes, because the IDEA
12 evaluations are in there and the IDEA evaluations
13 are used. So yes, some of the information from
14 the binder is used in the revised letter.

15 Q. It's Doctor Langdon; is that correct?

16 A. Yes, Doctor Langdon.

17 Q. Does Doctor Langdon have a separate role
18 in this process other than what you asked him to
19 do?

20 A. No separate role other than what I asked
21 him to do.

22 Q. He was a part of the all tenured faculty
23 meeting?

24 A. Yes.

25 Q. And also Doctor Orillio?

LISA BERARDINO BY MR. ANDREWS

1 A. Yes.

2 Q. Why did you contact Doctor Langdon for
3 additional information?

4 A. Okay. The College Wide has asked for a
5 revised memo that has more narrative information
6 and I contacted the Dean, Bob Orillio, and Will
7 Langdon requesting for more information,
8 especially about the nature of the performance in
9 teaching.

10 Q. When you say the Dean, can you more
11 fully identify who you are referring to?

12 A. Steve Havlovic.

13 Q. Orillio's title again, Doctor Orillio's
14 title again is what with regard to this process?

15 A. He is the coordinator of undergraduate
16 business degree programs. He is the adviser to
17 undergraduates.

18 Q. And more fully Doctor Langdon's title
19 was?

20 A. He is the coordinator for finance and
21 accounting.

22 Q. Did you contact Dean Havlovic with
23 regard to Ms. Gaffney's application?

24 A. No.

25 Q. Did you contact Dean Havlovic with

LISA BERARDINO BY MR. ANDREWS

1 regard to Doctor Jarrel's application?

2 A. No.

3 Q. Did you contact either Doctor Langdon or
4 Doctor Orillio with regard to Doctor Gaffney or
5 Doctor Jarrel's applications?

6 A. No.

7 Q. So just Doctor Zhou?

8 A. That is correct.

9 Q. So was there another meeting of the
10 College Wide Personnel Committee a week later?

11 A. Yes.

12 Q. And a more detailed memo had been
13 forwarded to Doctor Pittarelli?

14 A. Yes, Mike Pittarelli.

15 Q. And the three business department
16 reviews were considered at that meeting; is that
17 correct?

18 A. Yes.

19 Q. Were more detailed memos provided with
20 regard to Doctors Gaffney and Jarrel?

21 A. Yes, yes.

22 (Whereupon, Plaintiff
23 Attorney/Client discussion was held
24 off the record.)
25

LISA BERARDINO BY MR. ANDREWS

1 BY MR. ANDREWS:

2 Q. Was anything else presented to the
3 College Wide Personnel Committee other than the
4 more detailed memos?

5 A. Yes.

6 Q. What additional information was
7 presented?

8 A. At the opening when we began to consider
9 Zhou, at the beginning of that Robert Yeh told
10 the group that the information from Will Langdon
11 was a personal conflict between Will Langdon and
12 Zhou.

13 Q. Was any other information provided to
14 the College Wide Personnel Committee?

15 A. They asked me had there been a peer
16 review of his teaching and I said, yes, that I
17 had sat in on his teaching and that I saw the
18 teaching as average.

19 Q. Was any other information presented to
20 the College Wide Personnel Committee regarding
21 Doctor Zhou?

22 A. No.

23 Q. There was no direct communication from
24 Doctor Langdon presented to the College Wide
25 Personnel Committee?

LISA BERARDINO BY MR. ANDREWS

1 A. There is a memo that I sent along with
2 the letter and that is what Robert Yeh was
3 referring to.

4 Q. Did Doctor Yeh further characterize what
5 the conflict was between --

6 A. No.

7 Q. -- Doctor Zhou and Doctor Langdon?

8 A. No.

9 Q. Were there any questions as to the
10 nature of that conflict?

11 A. No.

12 Q. Eventually there was a vote of the
13 College Wide Personnel Committee with regard to
14 Doctor Zhou's application; is that correct?

15 A. That is correct.

16 Q. What was that vote?

17 A. The College Wide Committee did not
18 support the School of Business vote of no.

19 Q. In other words, the College Wide
20 Personnel Committee did support Doctor Zhou's
21 application for renewal?

22 A. I am not going to phrase it that way.
23 My understanding is that the College Wide is
24 voting not to support our vote of no.

25 MR. GOGLIA: I am sorry, I am a

LISA BERARDINO BY MR. ANDREWS

1 little confused.

2 MR. ANDREWS: Me too, but I will
3 get there.

4 BY MR. ANDREWS:

5 Q. Again, there was a vote with regard to
6 Doctor Zhou's --

7 A. Yes.

8 Q. -- application for renewal?

9 A. Yes.

10 Q. Is it fair to say that the vote, the
11 choices in the vote were not renewing and
12 renewing?

13 A. We are speaking at College Wide?

14 Q. Yes.

15 A. My understanding is that the vote is is
16 the College Wide supporting the School of
17 Business decision, are they supporting our
18 decision not to renew.

19 Q. So you don't understand the College Wide
20 Personnel Committee as having expressed
21 collectively an opinion that Doctor Zhou should
22 be renewed?

23 A. I am agreeing with you, yes. I
24 understood the College Wide vote that they did
25 not -- they felt like they did not have enough

LISA BERARDINO BY MR. ANDREWS

1 understanding and information to support the
2 college vote of no renewal.

3 Q. With regard to Doctor Gaffney was there
4 a vote of the College Wide Committee?

5 A. Yes.

6 Q. And what was the result of that vote?

7 A. Okay. So they voted to support the
8 school's decision of offering two year renewal.

9 Q. And the same is true of Doctor Jarrel?

10 A. They support our vote of two year
11 renewal.

12 Q. You said a minute ago that you thought
13 the College Wide committee decided they didn't
14 have enough information to support the School of
15 Business' decision not to renew Doctor Zhou; is
16 that correct?

17 A. I did say that. I should amend. I
18 don't know why the school -- I don't know why the
19 College Wide voted as they did. So all I can say
20 is that they voted no support of our decision.

21 Q. I think you said this was your first
22 experience with the College Wide Committee?

23 A. Yes.

24 Q. Have you had subsequent experience with
25 the College Wide Committee?

LISA BERARDINO BY MR. ANDREWS

1 A. I come in as advocate now.

2 Q. Are you aware of any other instance
3 where the College Wide Committee decided not to
4 support the determination of a departmental
5 decision?

6 A. I am not aware of another time that the
7 College Wide did not support a school decision.

8 Q. You have never heard of that happening
9 other than with Doctor Zhou?

10 A. That is correct.

11 Q. So as I understand the process, after
12 the College Wide Personnel Committee's
13 consideration, a letter is forwarded to the Vice
14 President for academic affairs, is that what it
15 is?

16 A. That is my understanding is that Mike
17 Pittarelli -- you are asking about the College
18 Wide?

19 Q. Yes.

20 A. That Mike Pittarelli writes a letter and
21 it goes to the VP. That is my understanding.

22 Q. Was that letter circulated to members of
23 the College Wide Personnel Committee?

24 A. No, no.

25 (Whereupon, a brief recess was

LISA BERARDINO BY MR. ANDREWS

1 Q. Did you take part in that vote?

2 A. My recollection is that, yes.

3 Q. You were the one no vote?

4 A. Yes.

5 Q. Can you read the word that is below the
6 recording of the vote there?

7 A. It looks like it says warning.

8 Q. Do you have any idea what that refers
9 to?

10 A. No recollection.

11 Q. Below that it says don't want to throw
12 away someone who can develop?

13 A. Yes.

14 Q. Was that a statement made during the
15 College Wide meeting, College Wide Committee
16 meeting?

17 A. Yes.

18 Q. Do you recall who made that statement?

19 A. No, I do not.

20 Q. Do you recall if that was the sentiment
21 of those who voted yes?

22 A. At least one person said that. One
23 person said that.

24 Q. Below that does it say stronger letter?

25 A. It does say stronger letter.

LISA BERARDINO BY MR. ANDREWS

1 Q. Do you know what that refers to?

2 A. I believe that this was a criticism of
3 the memo that I had prepared, that it needed to
4 be a stronger letter.

5 Q. When you say the memo that you prepared,
6 what are you referring to?

7 A. The one that went to Mike Pittarelli and
8 sent to College Wide.

9 Q. Would this be the first one or second
10 one?

11 A. The second one.

12 Q. So they still felt that was not what it
13 should be?

14 A. That is my understanding.

15 Q. Who made that statement?

16 A. Someone in the College Wide Committee.

17 Q. So, again, you think that is a statement
18 by one person?

19 A. Yes.

20 Q. What does it say below that?

21 A. File warrants one year, AG service.

22 Q. Then looking below that slightly to the
23 right it appears to say Robert?

24 A. Yes, Robert.

25 Q. Does it refer to Doctor Yeh?

LISA BERARDINO BY MR. ANDREWS

1 Q. Going down to where it says D,
2 university/community service, do you see that?

3 A. Yes.

4 Q. There are some handwritten notations
5 there; is that correct?

6 A. Yes.

7 Q. After where it says Jason Zhou serves on
8 the Budget and Planning Committee?

9 A. Yes.

10 Q. Can you tell me what it says below
11 there?

12 A. Bing, Bong, B-I-N-G, B-O-N-G,
13 International Student Association.

14 Q. There is a comma between the two of
15 those; is that correct?

16 A. Yes.

17 Q. Do those refer to activities that
18 Doctor Zhou took part in?

19 A. Yes.

20 Q. Can you tell me why that was not listed
21 on the memorandum itself?

22 A. No.

23 Q. Those are examples of
24 university/community service correct?

25 A. Yes.

LISA BERARDINO BY MR. ANDREWS

1 have familiarity with, correct?

2 A. Correct.

3 Q. This related in particular to the 2006
4 review of personnel actions, correct?

5 A. Correct.

6 Q. But this is similar to the calendar that
7 is established for other years also, correct?

8 A. Correct.

9 Q. So it would be similar to the calendar
10 utilized when you, yourself, were reviewed in the
11 past?

12 A. Correct.

13 Q. Is there somewhere on there that it
14 talks about members of the Peer Review Committee
15 soliciting the opinion of the Dean?

16 A. No.

17 MR. GOGLIA: The document speaks
18 for itself. Thank you.

19 MR. ANDREWS: I want her
20 interpretation of it and I am entitled
21 to her interpretation of it.

22 MR. GOGLIA: You can answer the
23 question.

24 A. No.

25

LISA BERARDINO BY MR. ANDREWS

1 A. Correct.

2 Q. Was there a prior conversation when you
3 decided he should send the memo?

4 A. I sent an E-mail. I sent an E-mail.

5 Q. To Doctor Langdon?

6 A. To Doctor Langdon, Steve Havlovic, and
7 Bob Orillio requesting that the Academic
8 Committee had requested more information.

9 Q. When you say the Academic Committee?

10 A. The College Wide, the College Wide.

11 Q. Right. Now you sent that memo to those
12 individuals?

13 A. Yes, I did.

14 Q. Was that on behalf of your fellow Peer
15 Review Committee members?

16 A. I am acting on behalf of the Peer
17 Review.

18 Q. Did Doctor Yeh say that those people
19 should be solicited to provide information?

20 A. No.

21 Q. Did Mr. Petronio?

22 A. No.

23 Q. So that was a decision that you made?

24 A. I am responding to what the College Wide

25 Committee said that we needed to do.

LISA BERARDINO BY MR. ANDREWS

1 Q. But they didn't ask you to contact those
2 people?

3 A. No.

4 Q. They asked you to get more information?

5 A. Yes.

6 Q. And there was more information that you
7 had not provided that was in Doctor Zhou's
8 portfolio?

9 MR. GOGLIA: Objection. I am just
10 not sure what you mean by portfolio.

11 BY MR. ANDREWS:

12 Q. Well, there was a file with Mr. Zhou's
13 own material that he submitted, correct?

14 A. That is correct.

15 Q. There was information in that file that
16 had not been included in what you had provided to
17 the College Wide Committee, correct?

18 A. Are you saying that the binders are like
19 that?

20 Q. Correct.

21 A. And I am turning in a summary page?

22 Q. Correct.

23 A. So yes, there is going to be

24 information.

25 Q. By it's very nature it's a summary?

LISA BERARDINO BY MR. ANDREWS

1 A. Yes.

2 Q. But what they were asking you for was a
3 more detailed summary?

4 A. They were asking for more explanation
5 and understanding of the student complaints and
6 the performance, the teaching performance
7 problems. For that information I felt like I
8 needed to go to the coordinators because the
9 coordinators are getting the student complaints.

10 Q. I would like to show you again a
11 document marked as Exhibit 49?

12 A. Okay.

13 Q. I think you said that was your recording
14 of what was requested of you by the College Wide
15 Committee?

16 A. Yes.

17 Q. There is no reference to student
18 complaints in what they asked you to get
19 information about, is there?

20 A. Present all evidence (indicating).

21 Q. Present all evidence. That doesn't just
22 relate to student complaints. It doesn't relate
23 to just one factor, it relates to all evidence,
24 correct, correct?

25 A. Please restate what you said.

LISA BERARDINO BY MR. ANDREWS

1 Q. Yes. I asked you to point out where the
2 Committee directed to you get more information
3 about student complaints?

4 A. Okay.

5 Q. And I showed you the document where you
6 wrote down what the Committee requested from you?

7 A. Okay.

8 Q. And you have just reviewed that
9 document, correct?

10 A. Correct.

11 Q. I asked you where it says that you were
12 to provide more information about student
13 complaints, correct?

14 A. Correct.

15 Q. And you pointed to a point in the memo
16 where it says present all evidence, correct?

17 A. That is correct.

18 Q. Wouldn't that relate to all evidence,
19 not just information about student complaints?

20 A. The Committee requested more
21 information.

22 Q. And you interpreted that as more
23 information about student complaints?

24 A. And in particular the issue under
25 discussion is teaching. So I do take back

LISA BERARDINO BY MR. ANDREWS

1 student complaints. I do take that back. There
2 is a request for more information and more
3 information about the problems in teaching.

4 Q. But it doesn't just say in your notes
5 that it's relating to teaching, does it?

6 A. Not in my notes.

7 Q. In fact, it says that they wanted
8 expanded information about a variety of topics,
9 about most of the criteria, correct?

10 A. Yes, it does.

11 Q. So for example, they wanted more
12 information about Doctor Zhou's service?

13 A. That is correct.

14 Q. Such as the information that you hand
15 wrote on the memo, but never provided to the
16 College Wide Committee, correct?

17 A. Correct.

18 Q. I would like to show you a document that
19 I would ask to be marked as Exhibit 53.

20 (Exhibit 53 marked for
21 identification.)

22 BY MR. ANDREWS:

23 Q. Doctor, can you take a look at that for
24 me, please. Do you recognize this document?

25 A. Not yet. So this is Maureen

LISA BERARDINO BY MR. ANDREWS

1 Doctor Gaffney's you added -- you cut and pasted
2 some information regarding publications?

3 A. Yes, yes.

4 Q. On the first page of this document it's
5 just something that looks a little funny to me.
6 So I am going to ask you about it. It says the
7 School of Business Personnel Committee reviewed
8 the application from, then it's redacted, for a
9 two year reappointment and approved it by a vote
10 of zero to eight?

11 A. Okay.

12 Q. They means they voted eight to zero in
13 favor of Doctor Gaffney being reappointed, right?

14 A. That is correct.

15 Q. Is that usual to write the wining number
16 on the right on these things?

17 A. I don't know what is usual.

18 Q. Is that something you think you could
19 have done?

20 A. I could have done that.

21 MR. GOGLIA: We will stipulate to
22 the fact that it looks odd.

23 MR. ANDREWS: Just wondered if that
24 refreshed her recollection if that is an
25 idiosyncrasy.

LISA BERARDINO BY MR. ANDREWS

1 you have seen this document before?

2 A. I don't recall it.

3 Q. If it was a part of Doctor Gaffney's
4 binder would you have seen it?

5 A. Probably.

6 Q. Do you recognize what this document is?

7 A. I believe it's three -- I believe it's
8 three different individuals commenting.

9 Q. So these would be three students
10 commenting about the class that this form relates
11 to?

12 A. I can't tell if it's three different
13 students. It just says comments.

14 Q. Have you seen this type of thing before?

15 A. I am going to say that yes, it's the end
16 comment from the on-line with the student
17 comments typed in. Yes, I have seen this, this
18 type.

19 Q. And usually there are multiple comments
20 on a form like this; is that fair to say?

21 A. Yes.

22 Q. So, in fact, this may be three separate
23 comments?

24 A. Yes.

25 Q. If we assume for the moment that these

LISA BERARDINO BY MR. ANDREWS

1 are three separate comments, looking at the first
2 one starting even by the end of the course and
3 ending with the line possible technical problems
4 on their side. Do you see what I am referring
5 to?

6 A. No.

7 Q. That was not a very good way to describe
8 it. If you look at the first three lines and
9 assume that that is a single comment.

10 A. I see it now.

11 Q. Would you characterize that as a
12 positive comment or a negative comment?

13 A. Negative.

14 Q. Looking at the last five lines on this
15 sheet, would you describe that as predominantly
16 positive or predominantly negative?

17 A. Well, there is some positive and some --
18 the last, I love his supplementary material,
19 would be positive. The rest of it looks
20 negative.

21 Q. So it's predominantly negative?

22 A. Yes.

23 Q. Now, these comments are not discussed in

24 Doctor Gaffney's summary that was prepared by the

25 Committee; is that correct?

LISA BERARDINO BY MR. ANDREWS

1 A. That is correct.

2 Q. So there was no reference to there being
3 negative comments, do you recall offhand?

4 A. I don't recall. I don't recall.

5 Q. Well, I am going to represent to you
6 that they are not listed. Can you tell me why
7 those wouldn't have been listed?

8 A. The letter that the Committee produces
9 tries to capture the overall status of the
10 professor's teaching. And my recollection is
11 that the overall of Professor Gaffney was that
12 there were some weaknesses, but that she was
13 improving and making significant improvements and
14 that she had many favorable students. So my
15 recollection is that the whole picture of Maureen
16 Frances Gaffney was overall positive.

17 MR. GOGLIA: I think she meant
18 Maureen Smith-Gaffney.

19 A. Yes, Maureen Smith-Gaffney.

20 BY MR. ANDREWS:

21 Q. Well, the document will speak for
22 itself. Do you happen to recall whether you
23 reviewed Professor Gaffney's on-line ratings?

24 A. I don't recall.

25 MR. ANDREWS: In fact, in looking

LISA BERARDINO BY MR. ANDREWS

1 through the disclosure, Doug, it seems
2 that on the Fall 2005 accounting 685-35
3 on-line ratings were not provided.
4 There were students comments disclosed,
5 but no on-line ratings. Can you look
6 for those?

7 MR. GOGLIA: Sure.

8 MR. ANDREWS: It's just the on-line
9 ratings relative to this class.

10 MR. GOGLIA: Again, I will
11 represent to you that we produced
12 Maureen Gaffney's complete employment
13 file is my recollection. So to the
14 extent documents are maintained, they
15 should have been there. Mr. Panebianco
16 and myself will take a look.

17 MR. ANDREWS: Maybe they are still
18 available somewhere.

19 BY MR. ANDREWS:

20 Q. Did you ever observe Doctor Gaffney's
21 teaching?

22 A. No.

23 Q. How about Doctor Jarrel?

24 A. No.

25 Q. Can you again take a look at what has

LISA BERARDINO BY MR. ANDREWS

1 been marked as Exhibit 53?

2 A. Okay.

3 Q. Looking on the second page under
4 scholarly ability?

5 A. Publications?

6 Q. Actually at the top above where it says
7 publications. Do you see where I am referring?

8 A. Yes, okay.

9 Q. It describes different areas of research
10 that Doctor Gaffney has undertaken?

11 A. Yes.

12 Q. Do you think it's important to list that
13 kind of information?

14 A. It's not typical.

15 Q. It's not typical for candidates to list
16 that kind of information?

17 A. The typical is to just have the
18 publications.

19 Q. But when you prepared this document you
20 put that information in, correct?

21 A. That is correct.

22 Q. Looking at the final page it says
23 effectiveness in teaching. Do you see that at

24 the top?

25 A. Yes.

LISA BERARDINO BY MR. ANDREWS

1 Q. It suggests that Doctor Gaffney received
2 good teaching evaluations based on the IDEA?

3 A. Yes.

4 Q. For example a 3.7 for teaching
5 excellence?

6 A. Yes.

7 Q. And so someone receiving a 3.7 is a good
8 teaching evaluation?

9 A. Yes.

10 Q. So if someone received higher than a 3.7
11 that also would be a good teaching evaluation,
12 correct?

13 A. Yes.

14 Q. Do you recall what the range of
15 Doctor Gaffney's IDEA evaluations was?

16 A. I do not recall the range.

17 Q. If I told you there was a 1.5 included
18 would you say that was a good evaluation?

19 A. No.

20 Q. That's a rather poor evaluation?

21 A. Poor.

22 Q. How about 3.0, is that a good teaching
23 evaluation?

24 A. Let's see, that is the middle zone.

25 Q. Would you say that is average?

LISA BERARDINO BY MR. ANDREWS

1 A. I would say average.

2 Q. How about 2.4?

3 A. Okay. That is the low end of the scale.

4 Q. So it's somewhere between average and
5 really bad?

6 A. Yes.

7 Q. Can you recall why only the 3.7 was
8 listed with regard to Doctor Gaffney as opposed
9 to listing more of the evaluation marks?

10 A. My recollection is that there is time
11 constraints to get the memos revised, and perhaps
12 under the time constraints that that is keeping
13 the total listing of the IDEA evaluations.

14 Q. I am sorry. Under the time constraints
15 what?

16 A. Recall that it's one week from the
17 revised memos to turning these memos around by
18 the Committee.

19 Q. So you chose to select the one best
20 rating that Doctor Gaffney had?

21 A. No. I am saying in an explanation as to
22 why there is not the full table, I would suggest
23 that the time of recreating a whole table.

24 Q. Do you recall relative as between...
25 Doctor Gaffney and Doctor Zhou how the full

LISA BERARDINO BY MR. ANDREWS

1 Q. So Doctor Orillio said that he observed
2 Doctor Zhou's teaching?

3 A. Well, I guess I am going to take it
4 back. I don't mean of the teaching. I just mean
5 faculty and the coordinators, what they observe
6 about the teaching.

7 Q. But not that they actually observed his
8 teaching?

9 A. That is correct.

10 Q. Other than you do you know of anyone --

11 A. I don't know.

12 Q. -- who observed Doctor Zhou's teaching?

13 A. I do not know of anyone other than me.

14 Q. I want to talk a second about the first
15 College Wide Committee meeting.

16 A. Okay.

17 Q. At that meeting there was not a
18 presentation of a letter by Doctor Langdon,
19 correct?

20 A. That is correct.

21 Q. Then I am going to go to the second
22 meeting. There was a presentation of a letter by
23 Doctor Langdon, correct?

24 A. That is not correct. May I --

25 Q. Sure. It was provided in advance?

LISA BERARDINO BY MR. ANDREWS

1 just to be clear, I think we were
2 talking about Maureen Smith-Gaffney,
3 not --

4 A. I am sorry.

5 BY MR. ANDREWS:

6 Q. What I asked was was there any
7 discussion of complaints by students about either
8 of those two professors, that's all I asked?

9 A. No.

10 Q. I would like you to take a look at a
11 document previously marked Exhibit 17. Have you
12 seen this document before?

13 A. Yes, I have.

14 Q. Is that your initial that appears LB?

15 A. Yes.

16 Q. And your handwriting?

17 A. Yes.

18 Q. Is this something that you forwarded to
19 the College Wide Academic Personnel Committee?

20 A. Yes.

21 Q. Can you tell me whose initials appear on
22 this besides yours?

23 A. EP would be Ed Petronio.

24 Q. Was there anyone on the Peer Review
25 Committee whose initials don't appear here?

LISA BERARDINO BY MR. ANDREWS

1 A. Robert Yeh.

2 Q. Do you have any knowledge of Doctor Yeh
3 ever having initialed this document?

4 A. I thought he had. I thought he had
5 initialed it.

6 Q. Well, but you don't see it here, right?

7 A. I don't see it here.

8 Q. Well, looking at the date November 15,
9 2006, do you see that?

10 A. I do see that.

11 Q. Does that suggest to you whether this
12 was the first or second memoranda submitted?

13 A. Second.

14 Q. So this was after they asked you for
15 more information, which you came back and
16 submitted to the College Wide academic Personnel
17 Committee?

18 A. Yes.

19 Q. Did you draft this document?

20 A. Yes, I did.

21 Q. In looking at item A, master of subject
22 matter, it says that Doctor Zhou holds his Ph.D.
23 in finance, correct?

24 A. Correct.

25 Q. Had he provided the institution that he

LISA BERARDINO BY MR. ANDREWS

1 A. I do not know why. I don't know why. I
2 amend that.

3 Q. You know why?

4 A. The focus was on the teaching. So the
5 focus of this letter and my understanding of what
6 the Committee wanted was that they wanted to
7 review the teaching.

8 Q. It's not really correct in terms of what
9 the Committee wanted, is it?

10 MR. GOGLIA: I am going to object
11 to that question. It's argumentative.

12 BY MR. ANDREWS:

13 Q. Okay, then I will show the witness
14 Exhibit 49. This is a document you testified to
15 previously today, correct?

16 A. Yes.

17 Q. And you testified that in the lower left
18 hand corner there was information that was
19 general as to all three applicants as to what the
20 Committee wanted, correct?

21 A. Correct.

22 Q. And what does it say next to number
23 five?

24 A. Expanded.

25 Q. Thank you. Focusing on the College Wide

LISA BERARDINO BY MR. ANDREWS

1 Committee, the second College Wide Committee
2 meeting, you attended that meeting, correct?

3 A. Correct.

4 Q. And a vote was taken at that meeting on
5 Doctor Zhou's application; is that correct?

6 A. That is correct.

7 Q. How did you vote?

8 A. I voted to support the School of
9 Business decision not to renew Jason Zhou.

10 Q. We got that in earlier, didn't we?

11 A. Yes.

12 Q. Thank you. You were the one vote in
13 that direction, correct?

14 A. Correct.

15 Q. Did the Committee have any discussion
16 regarding Doctor Zhou's application prior to the
17 vote?

18 A. There was a little bit of discussion,
19 yes.

20 Q. Did you participate in that discussion?

21 A. They asked me about my observation of
22 his teaching and I reported it as average.

23 Q. Was there anything more to your report
24 than just saying it was average?

25 A. No.

LISA BERARDINO BY MR. ANDREWS

1 Q. Wasn't the purpose that you -- wasn't
2 the reason that you voted against Doctor Zhou his
3 teaching ability?

4 A. Yes.

5 Q. Was there any other criteria in which
6 you felt he was lacking?

7 A. No.

8 Q. Yet your own observation of his teaching
9 was that it was average; is that correct?

10 A. That is correct.

11 Q. In your belief someone who meets all of
12 the criteria, all of the other criteria and has
13 average teaching is not fit to be reappointed, is
14 that your personal view?

15 A. Can you say the question again?

16 Q. Sure. You felt that he satisfied the
17 other criteria other than teaching?

18 A. Correct, yes.

19 Q. And your own observation of his teaching
20 was that it was average?

21 A. Yes.

22 Q. You didn't feel that he had any glaring
23 deficiency when you observed his teaching?

24 A. From my observation?

25 Q. From your observation?

LISA BERARDINO BY MR. ANDREWS

1 A. Yes.

2 Q. And you thought he was understandable?

3 A. I am not going to say -- no.

4 Q. Sufficient to be average in his
5 teaching? You have said that you found his
6 teaching to be average based on your observation,
7 correct?

8 A. Yes.

9 Q. And you have said that you reported to
10 the College Wide Committee that your observation
11 of Doctor Zhou's teaching resulted in the
12 conclusion that it was average, correct?

13 A. Correct.

14 Q. So he did not have a language problem
15 that made his teaching below average; isn't that
16 also correct?

17 A. I feel like you are putting words in my
18 mouth here.

19 Q. I am, but you get to disagree with me if
20 you want?

21 A. I am disagreeing with you.

22 Q. Explain the source of your disagreement?

23 A. What I am hearing is enough language to
24 understand most of what he is saying.

25 Q. Enough so that you can consider his

LISA BERARDINO BY MR. ANDREWS

1 teaching based on your observation to be average?

2 A. The understanding is enough to be
3 average.

4 Q. Do you recall anything else about the
5 discussion of Doctor Zhou's application during
6 the second College Wide Committee meeting?

7 A. Let's see, I recall discussion and I
8 recall the Committee trying to understand, the
9 Committee was making a good faith effort to try
10 to understand the issues. That is what I recall.

11 Q. So you don't recall anything more
12 specific than that?

13 A. I just remember people asking questions
14 and wanting to understand. That's what I
15 remember.

16 Q. In making a good faith effort to come up
17 with a determination?

18 A. Yes.

19 Q. Are you familiar with the fact that
20 Doctor Zhou had research funding while he was a
21 professor at SUNY IT?

22 A. No, I do not know that.

23 Q. You don't recall that being a part of
24 his binder?

25 A. I don't remember it, no.

LISA BERARDINO BY MR. ANDREWS

1 BY MR. ANDREWS:

2 Q. I am not asking you anything you heard
3 from counsel.

4 A. Then no.

5 Q. That is just as a general matter.

6 A. No.

7 MR. GOGLIA: Thank you. I
8 appreciate that.

9 MR. ANDREWS: Sure.

10 BY MR. ANDREWS:

11 Q. Did you know that Doctor Zhou had
12 complained about Doctor Langdon to SUNY IT
13 officials?

14 A. Robert Yeh told me that there had been
15 some complaint. So Robert Yeh said that there
16 had been some complaint.

17 Q. When did Doctor Yeh tell you that?

18 A. Before we reviewed the binder.

19 Q. So was Doctor Petronio also present for
20 that conversation?

21 A. No.

22 Q. Do you recall where that took place,
23 that conversation?

24 A. My office.

25 Q. So the two of you were there?

LISA BERARDINO BY MR. ANDREWS

1 A. Yes.

2 Q. Do you recall why the two of you
3 happened to be meeting in your office?

4 A. We were meeting to review the three
5 candidates.

6 Q. So it was immediately before you
7 reviewed the binders; is that correct?

8 A. Yes.

9 Q. So in the same meeting where you
10 reviewed the binders?

11 A. Yes.

12 Q. What precisely did Doctor Yeh say?

13 A. He said that there had been some episode
14 or something happened and that Jason Zhou had
15 gone to HR to complain about Will Langdon.

16 Q. What else did he say about that?

17 A. That's it. That's it.

18 Q. Did Doctor Yeh tell you why he was
19 telling you that?

20 A. No.

21 Q. Did you have an understanding as to why
22 he was telling you that?

23 A. No.

24 Q. Did you think that it should at all
25 impact your consideration of Doctor Zhou's case?

LISA BERARDINO BY MR. ANDREWS

1 Q. You are saying the point is to get
2 students engaged, correct?

3 A. Yes. Not to lighten the load.

4 Q. To use multimedia to get them to pay
5 attention, respond?

6 A. Discuss, yes.

7 Q. Now, you testified earlier that you were
8 present when Doctor Zhou did his presentation
9 when he was being interviewed. Do you recall
10 that?

11 A. I do recall.

12 Q. Do you recall that he showed a video
13 during that?

14 A. Very vague, very vague.

15 Q. Do you recall anything about the video
16 at all?

17 A. It had tennis balls.

18 Q. Juggling maybe?

19 A. Something with balls (indicating).

20 Q. Making a juggling motion with two hands?

21 A. Okay. Something about balls moving.

22 Q. After seeing the video you were not so
23 offended that he should not be hired; is that a
24 fair statement?

25 A. That is a fair statement.

LISA BERARDINO BY MR. ANDREWS

1 Q. I think you testified earlier that you
2 were told that there were complaints by students
3 about Doctor Zhou; is that correct?

4 A. That is correct.

5 Q. Who was it -- can you tell me who told
6 you about such complaints?

7 A. Before the --

8 Q. Let's start before the Peer Review
9 Committee meeting?

10 A. Steve Havlovic told me about the
11 complaints.

12 Q. That was primarily what he told you
13 about Doctor Zhou when you spoke before the Peer
14 Review Committee?

15 A. My recollection is we reviewed that the
16 research was good.

17 Q. So Doctor Havlovic said the research was
18 good?

19 A. The research was in place.

20 Q. What did he say about his service?

21 A. I don't recall discussion of the
22 service.

23 Q. Do you recall anything other than the
24 discussion of the research and the student
25 complaints?

LISA BERARDINO BY MR. ANDREWS

1 A. That's what I recall.

2 Q. Prior to the Peer Review Committee
3 meeting had you heard from anyone else that there
4 was complaints about Doctor Zhou's teaching?

5 A. No.

6 Q. Subsequent to the Peer Review
7 Committee's first meeting, but prior to the first
8 College Wide Committee meeting, did you speak to
9 anyone about complaints about Doctor Zhou by
10 students?

11 A. I didn't speak to anyone about the
12 complaints. In the school tenured faculty
13 meeting there was much discussion from many
14 people including all three coordinators that were
15 present about problems with Zhou's teaching and
16 there was discussion of student complaints at
17 that faculty meeting.

18 Q. So the three coordinators were
19 Doctor Langdon, Doctor Orillio?

20 A. And Doctor Gary Scherzer.

21 Q. Scherzer, can you spell it?

22 A. S-C-H-E-R-Z-E-R.

23 Q. Again, what did Doctor Orillio say about
24 complaints about Doctor Zhou's teaching?

25 A. He said that Zhou was aware of the

LISA BERARDINO BY MR. ANDREWS

1 higher number of foreign born MBA students in MBA
2 programs in the United States?

3 A. I don't have that data.

4 Q. Have you ever heard that suggested
5 before?

6 A. You are saying many, are you giving a
7 percentage?

8 Q. Do you have any idea what the proportion
9 is?

10 A. I don't.

11 Q. Do you have any idea what the proportion
12 is here at SUNY IT?

13 A. We have about 200 MBA students and maybe
14 twenty foreign born. I would go ten percent.

15 Q. Okay. Do you know who Professor Hoseoup
16 Lee is?

17 A. Yes.

18 Q. You are familiar with Professor Lee?

19 A. Yes.

20 Q. And he teaches here at SUNY IT?

21 A. Yes.

22 Q. And his native tongue is Chinese?

23 A. I don't know.

24 Q. Does he speak with a --

25 A. There is an accent.

LISA BERARDINO BY MR. ANDREWS

1 Q. A fairly thick accent?

2 A. There is an accent.

3 Q. How would you say it compares to
4 Doctor Zhou's accent?

5 A. About the same.

6 Q. You are familiar with the AACSB, I think
7 you mentioned it earlier?

8 A. Yes.

9 Q. Can you tell me what it stands for? I
10 don't mean to quiz you.

11 A. American Association of -- Business
12 School -- College Business, AACSB. Collegiate
13 School Of Business.

14 MR. GOGLIA: Do you want a
15 definition?

16 MR. ANDREWS: That's okay. If you
17 know off hand. Do you want to make a
18 representation to what it stands for
19 Mr. Goglia?

20 MR. GOGLIA: I will do my best.
21 It's stands for the Association to
22 Advance Collegiate Schools of Business.

23 MR. ANDREWS: I think you did an
24 excellent job.

25 MR. GOGLIA: Thank you.

LISA BERARDINO BY MR. ANDREWS

1 Q. Have you seen this document before?

2 A. No.

3 Q. I would like to direct your attention to
4 the third paragraph?

5 A. Okay.

6 Q. The first sentence says materials
7 available in the Human Resources office clearly
8 indicate that Doctor Zhou's university service is
9 more extensive than indicated in the Peer
10 Committee recommendation?

11 A. Okay.

12 Q. Do you agree with that?

13 A. Yes.

14 Q. It next say his publications are more
15 impression than one might be led to believe from
16 the section of scholarly ability. Would you
17 agree with that?

18 A. Yes.

19 Q. It makes a reference to grant funding.
20 Can you tell me why you didn't put more
21 information in the memorandum to the College Wide
22 Committee than you did relative to Doctor Zhou's
23 application?

24 A. My focus as I drafted it was on the
25 teaching.